

United States Senate
WASHINGTON, DC 20510

June 28, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security

The Honorable Alex Azar
Secretary of Health and Human Services

The Honorable Jefferson Sessions
United States Attorney General

Dear Secretaries Nielsen and Azar and Attorney General Sessions:

We write to express our deep concern and to request information about Department of Homeland Security (DHS), Department of Health and Human Services (HHS), and Department of Justice's (DOJ) plans to implement President Trump's June 20 Executive Order, "Affording Congress an Opportunity to Address Family Separation." We are troubled by the executive order's failure to remedy the humanitarian crisis of separating immigrant children and parents along the Southwest border that this administration heartlessly manufactured and fear that its proposed expansion of family immigration detention will further harm children's health, safety, and wellbeing.

Since announcing the "zero tolerance" policy in early April, this Administration has dramatically accelerated the separation of families along the Southwest border. DHS confirmed that between May 5 and June 9 alone, it separated more than 2,300 children from their parents and referred more than 2,200 adults for criminal prosecution.¹ As a result, HHS Office of Refugee Resettlement (ORR) facilities for unaccompanied minors are now over 90% capacity.² Troubling reports about children being separated from their parents in DHS and ORR custody, particularly children under five years of age, stimulated bipartisan national and international outcry against administration policies.³ Parents affected by the "zero tolerance" policy have

¹ Christina Wilkie, *Trump Administration Offers Few Details on the Fate of Over 2,000 Children Separated from Parents*, CNBC, June 20, 2018, available at: <https://www.cnbc.com/2018/06/19/few-answers-on-the-fate-of-over-2000-children-separated-from-parents.html>

² Dara Lind, *Trump Might Temporarily House Immigrant Kids Taken from Parents in "Tent Cities,"* VOX, June 13, 2018, available at: <https://www.vox.com/policy-and-politics/2018/6/13/17458008/immigrant-children-cages-separated-parents-border>

³ Andrew Restuccia and Lorraine Woellert, *Trump Signs Executive Order Halting Family Separations*, POLITICO, June 20, 2018, available at: <https://www.politico.com/story/2018/06/20/im-ashamed-of-what-theyre-doing-backlash-grows-for-trump-and-his-aides-655498>; Camila Domonoske and Richard Gonzalez, *What We Know: Family Separation and 'Zero Tolerance' At the Border*, NPR, June 19, 2018, available at: <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>

struggled to locate their children sent to ORR shelters nationwide and some have even been deported before locating their children.⁴

While the Administration has framed the executive order as a solution to a crisis of its own making, there are serious questions as to whether this directive will be implemented in a way that prioritizes the health and safety needs of children and their families. The order vaguely dictates a preference for keeping families together while doubling down in support of the “zero tolerance” policy of DOJ referrals of parents for criminal prosecutions that have fueled separations in the first place. The order, shockingly, does nothing to require DHS or HHS to take action to help reunify already separated children with their parents.

The order also threatens to dramatically expand detention of immigrant families with minor children in DHS facilities for potentially prolonged periods as the administration seeks judicial repeal of essential Flores settlement protections for children in immigration detention. Existing DHS family immigration detention centers, which have long been plagued by limited oversight and complaints of conditions harmful to children’s welfare,⁵ are already at near capacity.⁶ Even ICE’s own Advisory Committee on Family Residential Centers (ACFRC) found in 2016 that “DHS’s immigration enforcement practices should operationalize the presumption that detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children” and recommended that ICE discontinue the practice.⁷

The order in turn proposes to work with the Department of Defense and other federal agencies to create new DHS facilities to detain families. While the order leaves open the opportunity for immigrant children to remain with their parents, the children may then suffer well-documented psychological and potentially lifelong harms of confinement in jail-like conditions while they or their parents pursue immigration claims for which they are legally eligible, including asylum claims.⁸ This is unacceptable. The American Academy of Pediatrics

⁴ Jonathan Blitzer, *The Government Has No Plan for Reuniting the Immigrant Families It is Tearing Apart*, THE NEW YORKER, June 18, 2018, available at: <https://www.newyorker.com/news/news-desk/the-government-has-no-plan-for-reuniting-the-immigrant-families-it-is-tearing-apart>; Miriam Jordan, *‘I Can’t Go Without My Son,’ a Mother Pleaded as She Was Deported to Guatemala*, NEW YORK TIMES, June 17, 2018, available at:

<https://mobile.nytimes.com/2018/06/17/us/immigration-deported-parents.html#click=https://t.co/k190K3YIU6>

⁵ Letter from Senators to DHS Secretary Jeh Johnson on Family Detention, June 1, 2015; Letter from Judiciary Committee Ranking Member Leahy and Health, Education, Labor and Pensions Ranking Member Murray to DHS Secretary Jeh Johnson on Effect of Detention on Children’s Developmental, and Physical and Mental Health, July 31, 2015; Letter from Senators to DHS Secretary Jeh Johnson on Berks County Family Detention Center, September 27, 2016; Human Rights First, *Family Detention: Still Happening, Still Damaging*, October, 2015, Available at: <http://www.humanrightsfirst.org/sites/default/files/HRF-family-detention-still-happening.pdf>.

⁶ Josh Wagner, Nick Miroff, and Mike DeBonis, *Trump Reverses Course, Signs Order Ending his Policy of Separating Families at the Border*, WASHINGTON POST, June 20, 2018, available at: https://www.washingtonpost.com/powerpost/gop-leaders-voice-hope-that-bill-addressing-family-separations-will-pass-thursday/2018/06/20/cc79db9a-7480-11e8-b4b7-308400242c2e_story.html?utm_term=.73716872ea25; Molly Hennessy-Fiske, *Immigrant Family Detention Centers are Prison-like, Critics Say, Despite Efforts to Improve*, LOS ANGELES TIMES, Oct. 23, 2015, available at: <http://www.latimes.com/nation/nationnow/la-na-immigration-family-detention-20151020-story.html>

⁷ Report of the ICE Advisory Committee on Family Residential Centers. October 7, 2016. Available at: <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.

⁸ Benedict Carey, *A Troubling Prognosis for Migrant Children in Detention: ‘The Earlier They’re Out, the Better,’* NEW YORK TIMES, June 18, 2017, available at: <https://www.nytimes.com/2018/06/18/health/migrant-children->

has stated that there is no evidence to support the notion that spending any period of time in a detention center is safe for a child's health.⁸

To further aid our understanding of how the administration plans to implement the executive order, we respectfully ask that you respond in writing to the following questions and provide all relevant written documents from your respective departments by Tuesday, July 3, 2018:

1. Does the Administration plan to continue to pursue criminal prosecutions of parents under the "zero tolerance" policy – which to date has included parents' transfer from DHS to U.S. Marshals Service custody to be housed at Bureau of Prison facilities – without requiring their separation from their children? If so, how? Is the Bureau of Prisons capable of housing children with their parents?
2. Why is the Administration not choosing more humane and cost-effective community-based alternatives to detention, such as the Family Case Management Program, to ensure families remain together and in healthier environments while they pursue their case?
3. How do DHS and HHS plan to continue to comply with Flores settlement standards of care for immigrant children while DOJ pursues legal action to amend the judicial agreement as directed by the June 20 Executive Order?
4. Please provide any guidance and communications in the form of e-mail or memoranda that have been provided to DHS, HHS, and DOJ staff, including frontline supervisors, agents and officers on implementing the executive order.
 - a. Specifically, what directive has been given regarding the processing of family units between ports of entry and at ports of entry?
5. What policies and procedures will DHS follow to make decisions to separate family members? Please outline all specific circumstances that merit separation of a child from his or her parent.
6. What policies, procedures, and trainings are DHS and HHS developing to ensure that supervisors who make decisions about family separations and all employees in contact with immigrant children are knowledgeable about child welfare best practices?
7. Please produce all guidelines for CBP agents, officers, and DHS transport contractors concerning the practice of separating children from parents or other family members.
8. Please produce all training materials, musters, or supervisory directives related to the conduct of CBP agents and officers with respect to encountering family units and asylum seekers arriving at and between ports of entry.

[mental-health.html](#); American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, March 2017, available at: <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>

9. Please describe all pending investigations and discipline of DHS personnel that have resulted from family separations since January 1, 2017 and break them down by month.
10. What specific measures will DOJ take to prioritize immigration court cases of families and how will it ensure such measures do not hinder due process and access to counsel?
11. Please list all family detention facilities currently being constructed including location, size and type of structure.
12. Please list all prospective family detention facilities under consideration including location, size and type of structure.
13. Has DHS set any firm time limit on the permissible length of detention of immigrant families pursuing immigration claims?
14. What efforts will DHS undertake to ensure management accountability and facilitate robust congressional oversight of any new detention facilities that will hold immigrant children with their families?
15. The executive order makes no mention or directive with regards to the thousands of families that the Administration has already separated, including those separated prior to the implementation of the “zero-tolerance” policy. The Fact Sheet on “Zero-Tolerance and Family Reunification” issued by DHS on June 23rd provides little new information regarding DHS’s actual proposed procedures for reunification and appears to *only contemplate reunification for the purpose of removal*.⁹

However, just two days ago, a federal district court judge barred the separation of migrant children from their parents and required immigration officials to reunify families that have been separated as a result of the zero-tolerance policy.

- a. The court order states that all children must be reunited with their families within 30 days, and that all children under 5 years of age must be reunited with their families within 14 days. What steps are being taken to reunite these families within this timeframe objective?
- b. The court order states that parents must be allowed to speak to their children by phone within 10 days of being separated. What steps are being taken to ensure this is carried out?
- c. What resources are being provided to parents, guardians, sponsors, children, child advocates, and legal counsel to help families reunify?
- d. What steps is ICE taking to undertake individualized assessments for the purpose of considering release into the community on recognizance, parole, bond or

⁹ Department of Homeland Security, Fact Sheet: Zero-Tolerance Prosecution and Family Reunification, June 23, 2018, available at: <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>.

Alternatives to Detention programs of parents separated from their children and who remain in ICE custody so as to expedite reunification?

- e. How is the Administration helping parents and guardians who have been removed or left through voluntary departure reunify with children still in the United States?
16. What policies and procedures will DHS and HHS follow to allow parents and their separated children to locate, communicate with, receive updates about, and ultimately reunite with each other?
17. DHS has established a “detention reporting line” for parents to attempt to locate their children.
- a. How are detainees being provided information about this reporting line?
 - b. What protocol is followed when a parent calls and attempts to locate their child?
 - c. What procedures exist when DHS is unable to locate a child?
 - d. Once a child is located, what steps are taken to reunite the family?
18. DHS has noted that children may be able to locate a parent through the online detainee locator.
- a. How is this resource being made available to children, sponsors, staff at ORR funded facilities, and legal counsel?
 - b. How are younger children, toddler and infants expected to be able to use this system to reunify with parents?
19. It has been reported that a senior Administration official stated that 500 separated families have been reunited since May. Please provide the date each family was separated, reason for separation, date of reunification, and whether the family continues to be detained and the location of detention.
20. Please provide the number of children separated from their parents or guardians since April 1, 2018 broken down by day, and whether such families continue to be separated or have since been reunified.

We thank you for your prompt attention to this important and time-sensitive oversight request.

Sincerely,



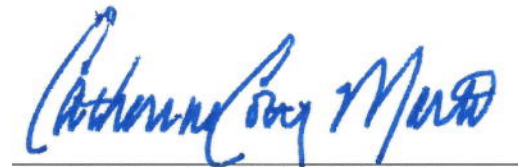
KAMALA D. HARRIS
United States Senator



SHELDON WHITEHOUSE
United States Senator



CHRIS VAN HOLLEN
United States Senator



CATHERINE CORTEZ MASTO
United States Senator



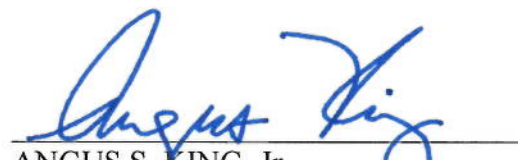
ELIZABETH WARREN
United States Senator



RICHARD BLUMENTHAL
United States Senator



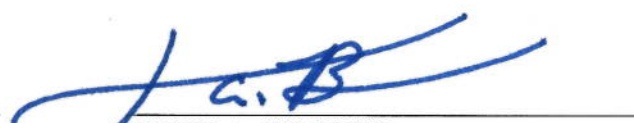
EDWARD J. MARKEY
United States Senator



ANGUS S. KING, Jr.
United States Senator



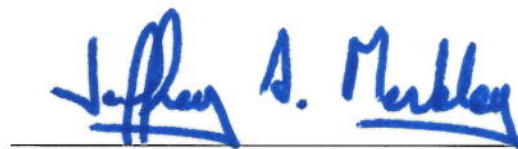
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